



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

L. Preston Bryant, Jr.
Secretary of Natural Resources

NORTHERN VIRGINIA REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703) 583-3800 Fax (703) 583-3801
www.deq.virginia.gov

David K. Paylor
Director

Jeffery A. Steers
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT

ISSUED TO

O. ZEIGLER AND YVONNE W. WHITE

FOR

**WINSTON ACRES FARM
(REGISTRATION NO. VPG230012)**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15 (8a and 8d), 62.1-44.17:1(F), and 10.1-1185, between the State Water Control Board and O. Zeigler and Yvonne White regarding Winston Acres Farm, for the purpose of resolving certain violations of the State Water Control Law and Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code § 62.1-44.7 and 10.1-1184.
2. "DCR" means the Virginia Department of Conservation and Recreation, an agency of the Commonwealth of Virginia.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "NMP" means Nutrient Management Plan.

6. "NVRO" means the Northern Virginia Regional Office of the Department.
7. "Order" means this document, also known as a Consent Special Order.
8. "Owners" means Dr. O. Zeigler White and Mrs. Yvonne W. White of Winston Acres Farm.
9. "Permit" means Virginia Pollution Abatement (VPA) General Permit for Poultry Waste Management No. VPG230012.
10. "Va. Code" means the Code of Virginia (1950), as amended

SECTION C: Findings of Facts and Conclusions of Law

1. Winston Acres Farm is owned and operated by O. Zeigler and Yvonne W. White in Louisa County, Virginia. The operation consists of 3 poultry houses where a maximum of 42,000 turkeys are raised at a time.
2. An annual site inspection was conducted by DEQ on September 21, 2004 and it revealed violations that were included in the inspection report that was sent to the Owners on September 24, 2004. Violations noted at the facility included the following:
 - o Uncovered litter piles in violation of 9 VAC 25-630.50.I.B.2. which states, "Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility that provides adequate storage. Adequate storage shall, at a minimum, include the following: a. Poultry waste shall be covered to protect it from precipitation and wind; b. Storm water shall not run onto or under the stored poultry waste;"
 - o Expired litter analysis in violation of 9 VAC 25-630.50.I.A.4. which requires poultry waste to be monitored at least once every three years;
 - o Expired NMP (as of 1/22/04) in violation of 9 VAC 25-630-50.I.B.6. which states, "The poultry grower shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation and maintain the plan on site. All NMPs written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with §10.1-104.2 of the Code of Virginia. The NMP shall be enforceable through this permit;" and
 - o Litter transfer records were not available for DEQ review in violation of 9 VAC 25-630-50.I.B.4. which requires that litter transfer records be maintained on site for three years after the transaction and shall be made available to Department personnel upon request.
3. A follow-up to the September 21, 2004 inspection was conducted on November 19, 2004 and found the uncovered piles still present, well after the 14 days allowed by 9 VAC 25-630.50.I.B.2.
4. On December 2, 2004, DEQ sent Warning Letter (WL) No. 2004-12-N-901 to the Owners based on the findings of the September 21, 2004 inspection.

5. The next annual inspection was conducted by DEQ on September 9, 2005, and it identified further violations that were included in the inspection report that was sent to the Owners on September 13, 2005. Violations noted at the facility included the following:
 - o Uncovered litter pile at the end of the poultry house and on the northwest side of the storage shed, and loose litter on the ground southeast of the storage shed in violation of 9 VAC 25-630.50.I.B.2. which states, "Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility that provides adequate storage. Adequate storage shall, at a minimum, include the following: a. Poultry waste shall be covered to protect it from precipitation and wind; b. Storm water shall not run onto or under the stored poultry waste;"
 - o Expired NMP (as of 1/22/04) in violation of 9 VAC 25-630-50.I.B.6. which states, "The poultry grower shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation and maintain the plan on site. All NMPs written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with §10.1-104.2 of the Code of Virginia. The NMP shall be enforceable through this permit;"
 - o Expired litter analysis in violation of 9 VAC 25-630.50.I.A.4. which requires poultry waste to be monitored at least once every three years; and
 - o Failure to comply with the NMP due to inadequate mortality disposal (improper aeration and coverage, disposal outside compost area) in violation of 9 VAC 25-630-50.I.B.6. which states, "The poultry grower shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation and maintain the plan on site. All NMPs written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with §10.1-104.2 of the Code of Virginia. The NMP shall be enforceable through this permit."
6. On September 14, 2005, DEQ sent Notice of Violation (NOV) No. 2005-09-N-001 to the Owners based on the findings of the September 9, 2005 inspection.
7. DEQ conducted a follow-up to the September 9, 2005 inspection on October 14, 2005 and found continuing violations as identified during the previous inspection, including a significant volume of uncovered litter. Considerable leaching from the litter piles was occurring, though it is unknown whether any of the leachate reached state waters.
8. On October 17, 2005, DEQ sent NOV No. 2005-10-N-002 to the Owners based on the findings of the October 14, 2005 inspection.
9. DEQ conducted another inspection of the Facility on April 26, 2006 and documented continuing violations that were captured in the inspection report that was sent to the Owners on May 1, 2006. The inspection report included the items requiring action, the corrective actions needed, and the expected completion dates as follows:
 - o Uncovered litter piles at the end of the poultry houses in violation of 9 VAC 25-630.50.I.B.2. which states, "Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground

water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility that provides adequate storage. Adequate storage shall, at a minimum, include the following: a. Poultry waste shall be covered to protect it from precipitation and wind; b. Storm water shall not run onto or under the stored poultry waste;"

- o Expired NMP (as of 1/22/04) in violation of 9 VAC 25-630-50.I.B.6. which states, "The poultry grower shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation and maintain the plan on site. All NMPs written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with §10.1-104.2 of the Code of Virginia. The NMP shall be enforceable through this permit,"
 - o Expired litter analysis in violation of 9 VAC 25-630.50.I.A.4. which requires poultry waste to be monitored at least once every three years;
 - o Failure to comply with the NMP due to inadequate mortality disposal (improper aeration and coverage, disposal outside compost area) in violation of 9 VAC 25-630-50.I.B.6. which states, "The poultry grower shall implement a nutrient management plan (NMP) approved by the Department of Conservation and Recreation and maintain the plan on site. All NMPs written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with §10.1-104.2 of the Code of Virginia. The NMP shall be enforceable through this permit;" and
 - o Litter transfer records were not available for DEQ review in violation of 9 VAC 25-630-50.I.B.4. which requires that litter transfer records be maintained on site for three years after the transaction and shall be made available to department personnel upon request.
10. The May 2006 report also stated that the loose litter northwest of the litter shed (observed during the September 2005 inspection) had been removed.
11. On June 21, 2006, DEQ received a copy of the letter sent to Dr. White by DCR on June 13, 2006 that approved an updated NMP for the Facility. The narrative of the NMP included the results of a litter analysis from May 17, 2006.
12. DEQ inspected the Facility again on July 26, 2006 and found remnants of a further litter pile (2 – 3 inches of turkey litter that appeared to be compacted by a bulldozer) on the northern side of the northernmost poultry house that must have been placed and mostly removed since the June 21, 2006 inspection. In addition, DEQ observed a noticeable amount of litter surrounding the locations of the formerly removed piles, especially at the western end of the southernmost poultry house, evincing that litter may have been improperly stored prior to DEQ's first observation of the practice. This loose litter extended for at least several feet into the dense vegetation and appeared to be many inches thick in some areas.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of its authority granted in Va. Code §62.1-44.15 (8a) and (8d), and 62.1-44.17:1(F), orders the Owners, and the Owners voluntarily agree, to perform the actions described in Appendix A to this Order. In addition, the Board orders the Owners and the Owners voluntarily agree, to pay a civil charge of \$1,750 in settlement of the alleged violations cited in this Order in two installments of \$875 each. The payments will be paid

within 30 and 60 days of the effective date of this Order, respectively. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, the Owners shall indicate that the payments are submitted pursuant to this Order and shall include the Social Security Numbers for the Owners.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Owners, for good cause shown by the Owners, or on their own motion after notice and opportunity to be heard.
2. This Order addresses and resolves those violations specifically identified herein, including those matters addressed in Section C of this Order and in the WL and NOV's issued to the Owners by DEQ on December 2, 2004, September 14, 2005, and October 17, 2005. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Owners admit the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Owners consent to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Owners declare they have received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and waive the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by the Owners to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the

Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Owners shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Owners must show that such circumstances resulting in noncompliance were beyond their control and not due to a lack of good faith or diligence on their part. The Owners shall notify the NVRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition listed above, which the Owners intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. Any plans, reports, schedules, permits, letters, or specifications attached hereto or submitted by the Owners and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall become effective upon execution by both the Director or his designee and the Owners. Notwithstanding the foregoing, the Owners agree to be bound by any compliance date that proceeds the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board terminates this Order in his or its sole discretion upon 30 days' written notice to the Owners. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve the Owners from their obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.


13. By their signature below, the Owners voluntarily agree to the issuance of this Order.

And it is so ORDERED this 18th day of December, 2006.



Jeffery A. Steers, NVRO Regional Director
Department of Environmental Quality

O. Zeigler and Yvonne W. White voluntarily agree to the issuance of this Order.

By: 

O. Zeigler White

By: 

Yvonne W. White

Date: 9/5/06


Date: 9/5/06

Commonwealth of Virginia

City/County of Louisa

The foregoing document was signed and acknowledged before me this 5th day of

September, 2006, by O. Zeigler and Yvonne W. White.



Notary Public

My commission expires: Nov. 30, 2007

**APPENDIX A
SCHEDULE OF COMPLIANCE**

O. Zeigler and Yvonne W. White shall:

1. Submit litter transfer records to DEQ biannually; due April 10 and October 10. The first submittal is due by October 10, 2006;
2. Continue corrective action on composting of mortalities. Any mortalities (including bones) that have fallen or are otherwise outside of the composting area shall be removed and relocated to the approved composting area. All composting shall be conducted in accordance with the Virginia Cooperative Extension Guidelines. DEQ will inspect the Facility biannually to determine compliance with this requirement;
3. By December 31, 2006, remove all loose litter from upland areas (including currently vegetated areas) that may reasonably be removed without further degrading the vegetation or disturbing soils where uncovered litter piles have been stored in the past, including those areas identified in Section C.12. of this Order. If any litter is present in wetlands or streams, the Owners shall consult with DEQ before proceeding with removal. DEQ will inspect the Facility biannually to determine compliance with this requirement; and
4. Documents to be submitted to the Department, other than the civil charge payment described in Section D of the Order, shall be sent to:

DEQ NVRO
Enforcement Division
13901 Crown Court
Woodbridge, VA 22193